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| DOCKET NO. NHH-CV-19-5003875-S | : | SUPERIOR COURT |
| NYRIEL SMITH BY HER MOTHER | | |
| NICHELLE HOBBY, Et Al | : | JUDICIAL DISTRICT OF NEW HAVEN |
| v. | : | HOUSING SESSION |
| CITY OF NEW HAVEN, ET AL. | : | AUGUST 12, 2019 |

# MEMORANDUM OF DECISION

## INTRODUCTION

The named plaintiffs are two children under the age of six who have elevated blood levels of lead. This matter is brought by parents of the two children on their behalf. Plaintiff Nyriel Smith has a high blood lead level of about eleven micrograms per deciliter. Plaintiff Muhawenimana Sara has a high blood lead level of about ten micrograms per deciliter. The plaintiffs are challenging the manner in which their condition and its source were dealt with by the defendants. The plaintiffs contend that the defendants violated state law and its own local ordinances in their failure to properly protect them and other children. The defendants contend that their actions have been appropriate and consistent with applicable law.

## PROCEDURAL HISTORY

This matter was brought by means of a verified complaint and an application for temporary injunction with an order to show cause. The complaint contains allegations directed to

a class action, and the plaintiffs have requested that the court certify a class. This matter was removed to federal district court but promptly remanded by that court to this court. This court then held a temporary injunction hearing on June 7, 2019, after which a temporary injunction was issued in favor of the two named plaintiffs. Currently before the court is the plaintiffs' request to certify a class.

## ANALYSIS

The plaintiffs' claim the following as the class: "all children living in New Haven who are or will in the future be under the age of six and either presently have, or will in the future have, elevated blood lead levels ["EBLs"] in excess of 5 micrograms per deciliter while at or under the age of six." The two plaintiffs each meet the foregoing description.

In certifying a class, Practice Book §§ 9-7 and 9-8, in pertinent parts, require that the court evaluate the following factors: (1) whether the class is so numerous that joinder of all members is impracticable; (2) whether there are questions of law or fact common to the class; (3) whether the claims and defenses of the representative parties are typical of the claims or defenses of the class; (4) whether the representative parties will fairly and adequately protect the interests of the class; and (5) whether the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. The defendants contest each of the foregoing factors. The court finds that the foregoing factors are met.

It is apparent to the court that the number of children under the age of six living in New Haven who have EBLs in excess of five micrograms per deciliter is so numerous that joinder is impractical. In fact, at the preliminary injunction stage, the defendants argued that the court should not issue the preliminary injunction because the number of children effected would overwhelm the New Haven Department of Health. The plaintiffs have provided evidence that the class numbers about 300 children. Courts have consistently held that when the number of plaintiffs exceeds forty it is presumptively too numerous to practically join to a litigation. Because of the nature of lead poisoning often involving older, run-down properties, the participants in this class are likely to be poor and have an impaired ability to bring separate actions concerning the issues here. There is no practical means of joining all plaintiffs to this litigation. Further, since only injunctive relief is requested, and since the defendants are notified of and distinctly aware of the identity of the class through statutorily mandated reporting of blood tests, a class action is the most practical, efficient, and appropriate means of proceeding. Accordingly, the court finds that this "numerosity" requirement is easily satisfied.

It is also clear that questions of law and fact are common to the class. In this matter, the plaintiffs are seeking injunctive relief to compel the defendants to comply with existing applicable law, specifically state statues and local ordinances. The case and relief turn on the applicability of the specified statutes and ordinances to the plaintiffs and the class. Considering the temporary injunction issued by the court, it is readily apparent that the class shares the critical questions of law and of fact. The defendants warn of the necessity for individualized fact

intensive inquiry and mini-trials for each member of the class. The court disagrees with this view. The common questions of fact and law appear to revolve around a proper interpretation of the statutes and ordinances in question and the applicability thereof to the class. Given their nature, once the ordinances and statutes are properly construed, their application to the class becomes readily apparent. Given the limited request for injunctive relief, the temporary injunction issued, and the applicability factors, the court believes that this "commonality" requirement is also easily met.

The allegations in the complaint assert that the two plaintiffs are identical to the class. However, the facts have changed a bit in this regard. First, plaintiff Sara has moved from her initial premises to a new premises in New Haven such that she has conceded that she no longer needs either a current lead inspection or an abatement order from the defendants. Second, a preliminary injunction has issued, and as a result, the defendants have conducted an inspection for defendant Smith.[1] Nevertheless, it does not appear to the court that these changed facts are controlling with respect to this "typicality" factor. At the time the complaint was filed, the two named plaintiffs were identical to the class. Their claims, given the injunctive relief requested, were essentially identical to the anticipated claims of the class. The intervening issuance of a temporary injunction and subsequent move by one plaintiff should not be used to defeat this

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[1] In this regard, it should be noted that the current injunction is temporary and the plaintiffs have requested permanent injunctive relief that is substantially broader.

factor. Compliance with this factor should be judged as of the time the action was commenced, provided subsequent events do not pose an impediment to the plaintiffs representing the class. Upon considering this factor, the court finds that this typicality factor has been met.

The named plaintiffs are represented by New Haven Legal Assistance. The attorneys who have entered appearances are experienced attorneys with experience in housing matters, lead-related housing litigation, and class action litigation. They have represented that they will, and have, vigorously prosecute this litigation. Neither the attorneys nor the plaintiffs have any expected conflicts of interest with the class. The court finds that the plaintiffs and their attorneys will adequately represent the interests of the class, and as a result this factor has been met.

The defendants are alleged to have refused to act on grounds generally applicable to the class. It has been alleged that the defendants have changed the policy of the New Haven Health Department such that they are refusing to provide necessary information, conduct lead inspections, or order any required abatements in relation to any New Haven child under the age of six with EBL's between 5 and 20 micrograms per deciliter. The foregoing refusal is alleged to violate applicable law. Further, since only injunctive relief is requested, and since the defendants are notified of and distinctly aware of the identity of the class through statutorily mandated reporting of blood tests, a class action is the most practical, efficient, and appropriate means of proceeding. In fact, it seems somewhat surprising to the court that the defendants disagree with this conclusion because it seems fairly apparent that addressing these issues as a class action will be substantially more efficient for the plaintiffs, the defendants, and the court, particularly given

the injunctive nature of the relief requested. Here, if appropriate, a single injunction can be used to provide relief to the entire class thereby ensuring efficient resolution of the issues and uniform treatment of similarly situated persons.

In this matter the court has issued the following temporary injunction: (1) provide the parents of Nyriel Smith with the information required by § 19a-110 (d) and (2) determine, and order abatement of all lead poisoning hazards existing at both 105 Lombard Street, New Haven, and 187 Wolcott Street, New Haven, by their respective owners, as required by New Haven Ordinance § 16-64.

As can be readily seen, the temporary injunction merely requires the defendants to comply with existing state and local law by providing mandated information, conducting inspections, and ordering abatements by landowners, as applicable. Once a class is certified, the proposed class definition could fit within the temporary injunction, making it applicable to the class. Thus, if a class is certified, the defendants may, if appropriate, be required to (1) provide mandated information to members of the class and (2) conduct inspections of the premises of members of the class and order abatements. All of this is already required by state statute and local ordinance. Beyond these requirements, the defendants have discretion in managing and ordering their responses. Thus, no individualized assessment by the court of each plaintiff should be required, assuming all parties act reasonably and in good faith. From the court's perspective, a class action appears to be the most efficient way of resolving this dispute for all involved, including the defendants. In fact, the foregoing conclusion is so clear to the court, that the

defendants' resistance does not appear to be based upon the efficiency of litigation and determination of these issues.

The court will therefore certify the following class, which contains certain clarifications within its definition: "all children living in New Haven who are under the age of six and that have elevated blood lead levels ["EBLs"] in excess of 5 micrograms per deciliter while under the age of six, where such child is under the age of six and resides in New Haven at the time the City of New Haven first becomes aware of such elevated EBL, provided that such children living in properties owned by the New Haven Housing Authority will not be members of the class."[2]

The court requests that the parties schedule a conference with the court to discuss a scheduling order and timing for any implementation necessary.

John L. Cordani, Judge

[2] The plaintiffs assert that the New Haven Housing Authority has the primary responsibility for lead issues on properties under its purview. State statutes and city ordinances do not make exceptions for NHHA properties, but federal statutes and regulations may be preemptive. As a result, the court has excepted from the class children living in properties owned by the New Haven Housing Authority.

Notice of Decision
Mailed to all counsel of record:

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On this the 12th day of August 2019

William C Pitt
Chief Clerk Housing Matters